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MAILED

AUG 31 2006

CENTRAL REEXAMINATION UNIT

In re Application of	:
Shigeto Ohmori et al	: DECISION DISMISSING
Application No. 09/451,080	: PETITION FOR A
Filed: November 30, 1999	: COMMISSIONER ORDERED
Attorney Docket No. 024060-114	: REEXAMINATION
	:

This is a decision on the March 11, 2002 patent owner petition entitled "PETITION FOR INITIATION OF COMMISSIONER ORDERED REEXAMINATION."¹

This petition is before the Office of Patent Legal Administration for review.

The patent owner's petition is dismissed for the reasons set forth below.

REVIEW OF SALIENT FACTS

1. A Notice of Allowance and Issue Fee Due and a Notice of Allowability were mailed on March 26, 2001 in application no. 09/451,080. The issue fee was timely received in the Office on June 26, 2001.
2. On October 4, 2001, the Director of Technology Center 2800 withdrew the application from issue under the provisions of 37 CFR 1.313 to reopen prosecution "due to the unpatentability of one or more claims."
3. Subsequent to the mailing of the October 4, 2001 notice withdrawing the application from issue, a patent number of 6,301,062 and an issue date of October 9, 2001 were assigned as a result of the payment of the issue fee on June 26, 2001.
4. On March 11, 2002 the present petition was filed by the applicants requesting that the Office initiate a Commissioner ordered reexamination.

¹ The type of reexamination being requested is presently referred to as a "Director ordered reexamination," but will be referred to as a "Commissioner ordered reexamination" in this decision to use petitioner's language.

5. On August 16, 2006 the Office of Petitions issued a notice vacating the patent grant that was mailed to applicants, stating that the above-identified application was mistakenly indicated to have been granted as U.S. Patent No. 6,301,062 on October 9, 2001.


DECISION

The Office of Petitions August 16, 2006 notice to applicants pointed out that the Group Director has been delegated the authority to withdraw an application from issue, including subsequent to payment of the issue fee. MPEP 1002.02(c), ¶ 19. Thus, the present application was properly withdrawn from issue prior to the scheduled issue date of October 9, 2001 by a duly authorized official at the Office. Accordingly, a patent did not issue to this application on October 9, 2001. *See Harley v. Lehman*, 981 F.Supp. 9, 11-12 .2, 44 USPQ2d 1699, 1701-02 .n2 (D.D.C. 1997), and *Black Light Power, Inc. v. Rogan*, 63 USPQ2d 1534 (CA FC 2002).

In view of the above, the Office's publication (on October 9, 2001) of a document, purporting to be a patent, was held to have been made in error. Accordingly, the present application is still pending, and there is no patent to reexamine. Thus, the instant petition to initiate a Commissioner ordered reexamination of a patent is dismissed.

CONCLUSION

1. The petition filed on March 11, 2002, is dismissed.
2. This application will be forwarded to Technology Center 2800, AU 2873, for further action as the nature of the case requires.
3. Telephone inquiries related to this decision should be directed to Karen Hastings, Legal Advisor, at (571) 272-7717 or, in her absence to Kenneth M. Schor, Senior Legal Advisor, at (571) 272-7710.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

kmh
August 29, 2006